

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL	)	MDL No. 146
INDUSTRY AVERAGE	)	
WHOLESALE PRICE LITIGATION	)	CIVIL ACTION: 01-CV-12257 PBS
	)	
	)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)	
ALL CLASS ACTIONS	)	Chief Magistrate Judge
	)	Marianne B. Bowler

**CLASS PLAINTIFFS' MOTION TO STRIKE  
SUR-REPLY DECLARATION OF STEVEN J. YOUNG**

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Fed. R. Evid. 702, Fed. R. Civ. P. 23 and case law, the class plaintiffs move this Court for an order striking the Sur-Reply Declaration of Steven J. Young filed by the Track 1 defendants in connection with the pending Motion for Class Certification.

As demonstrated in plaintiffs' motion to strike Young's first declaration, Young at his deposition admitted that he lacks the knowledge, skill, expertise, training, and education to testify regarding matters of applied economics and methodological approaches to the determination of class-wide impact and/or damages to the proposed class. Moreover, he conceded that he had no actual experience with pharmaceutical reimbursement, and to the extent that he had other experience that might serve as the basis for his testimony or expertise, he generally refused to testify about it.

This present motion incorporates these prior defects, but is based on much more. Most if not all of Young's new opinions in his sur-reply are (i) not supported by the record, (ii) are based on sweeping generalizations that do not satisfy Rule 702, and (iii) in far too many instances, it outright ignores evidence available to Young that renders his opinions unreliable. And perhaps most disturbingly, as he has done in all of his prior submissions, but has done so to an unprecedented extent here, Young has provided a completely unreliable and misleading presentation of evidence in order to justify his conclusions. His declaration is therefore so flawed it is unreliable under Fed. R. Evid. 702.

Finally, Young's sur-reply and attachment contains 98 pages of text almost all of it directed at a subject he only briefly touched on in his original declaration, reimbursement for physician-administered drugs. His sur-reply is in effect a dumping of a complete set of new material to re-do what he failed to accomplish the first time. Sur-replies are not to re-do failures, and this new material vastly exceeds the scope of his original opinions and should be stricken for this reason as well.

In further support of this motion, the class plaintiffs submit: (i) Class Plaintiffs' Memorandum in Support of Motion to Strike Declaration of Steven J. Young; and (ii) Rebuttal

Declaration of Dr. Raymond S. Hartman In Response to Sur-Reply Declaration of Steven J. Young.

**RULE 7.1(A)(2) CERTIFICATION**

Pursuant to L.R. D. Mass. 7.1(A)(2), the undersigned counsel hereby certifies that the MDL plaintiffs' class counsel have conferred with counsel for defendants in connection with this motion and have attempted in good faith to resolve or narrow the issues involved.

DATED: March 10, 2005

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFFS' MOTION TO STRIKE SUR-REPLY DECLARATION OF STEVEN J. YOUNG** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on March 10, 2005, a copy to Verilaw Technologies for Posting and notification to all parties

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